BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED
10-27-06
04:45 PM

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	Rulemaking 06-04-009 (Filed April 13, 2006)

REPLY COMMENTS AND LEGAL ARGUMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE FINAL WORKSHOP REPORT ON PHASE 1 ISSUES

I. INTRODUCTION

Pursuant to the October 5, 2006 "Assigned Commissioner's Ruling: Phase 1 Amended Scoping Memo and Request for Comments on Final Staff Recommendation"[1] (October 5 ruling), the Division of Ratepayer Advocates (DRA) submits the following reply comments and legal arguments on the "Phase 1 Staff Recommendations and Final Workshop Report" (Final Workshop Report).[2]

II. DISCUSSION

A. DRA agrees that Senate Bill 1368 exempts existing combined-cycle natural gas powerplants from compliance with the emissions performance standard (EPS) for the life of these facilities.

Pacific Gas and Electric Company (PG&E) notes in its Opening Comments that the Final Staff report's requirement that existing combined cycle gas turbines (CCGTs) meet the gateway standard of the EPS when contracts selling power from those facilities

[1] The October 5 ruling modified the June 1, 2006 Assigned Commissioner's Ruling: Phase 1 Scoping Memo and Notice of Workshop on Interim Greenhouse Gas Emissions Performance Standard (June 1 Scoping Memo).

[2] The Division of Strategic Planning issued their Final Workshop Report on October 2.

are renewed and when those facilities are repowered is inconsistent with new Public Utility Code Section 8341(d). [3] Section 8341(d) states that "[a]ll combined-cycle natural gas powerplants that are in operation or that have an Energy Commission final permit decision to operate as of June 30, 2007, shall be deemed to be in compliance with the greenhouse gases emissions performance standard." DRA agrees that "the exemption is absolute and not time-limited or contract-limited."[4] Accordingly, a new or renewed contract selling power from an existing CCGT should not be required to demonstrate compliance with the EPS, nor should a repowering of the existing CCGT trigger compliance with the CCGT. Construing Section 3841(d) to exempt existing or permitted CCGTs from compliance with the EPS through out the useful life of the facilities is consistent with the plain words of the statute, is easy to administer, and would not discourage repowering existing CCGTs. DRA therefore recommends that the Commission exempt existing or permitted CCGTs from EPS review for the life of those facilities as long as they are operated as a CCGT.[5]

B. DRA agrees that the Commission should adopt an emission proxy for unspecified resource contracts based on the underlying fuel mix.

In their opening comments, both Southern California Edison Company (SCE) and PG&E objected to the assignment of an emission proxy imputed from the California Energy Commission (CEC) "Net System Power Average" for unspecified resource contracts. Both parties pointed out that a blind assignment of such an emission proxy could unfairly penalize hydroelectric power imports from the Northwest. DRA agrees that this would be a problem and therefore modifies its earlier recommendation for imputing the emissions of unspecified contracts. Rather than using a single emission proxy for all unspecified power contracts, the Commission should specify the default

[3] Opening Comments of PG&E, p, 4.

[4] Id.

[5] For example, if the heat recovery steam generator and steam turbine were removed from a CCGT, it would no longer operate as a CCGT and should therefore no longer be exempt.

emission rate for each fuel type within the CEC "Net System Power Average." When a Load Serving Entity (LSE) submits an unspecified power contract for Emissions Performance Standard (EPS) screening, it should have the option of providing documentation that shows the fuel mix of the contracted power. If 100% of the power is sourced from a particular resource, such as hydroelectric plants, then the assigned emission should be based on the Commission-adopted emission rate for that resource. If the resource is unknown, then the assigned emission will be based on the Commission-adopted emission rate for each fuel type weighted by the mix of the CEC "Net System Power Average."

This approach offers the flexibility to accommodate unspecified power contracts that might otherwise be rejected based on a single default emission rate. Furthermore, it would motivate LSEs to work with their power suppliers to document the fuel mix of the unspecified power contracts, which is an important step towards meeting California's emission reporting requirements that will become mandatory by January 1, 2008.

C. The Commission should exempt bottoming-cycle cogeneration facilities from EPS requirements.

The Energy Producers and Users Coalition (EPUC) and the Cogeneration Association of California (CAC) argue that bottoming-cycle cogeneration[6] technology, which generates electricity from water heat produced by an industrial process, should not be subject to the EPS.[7] In the example cited, "calcining petroleum coke from [] heavy residual oil," the primary purpose of the process described is not generation of power, but another industrial purpose. Thus, the processes and the machinery associated with

[6] On October 20, 2006 FERC issued Order 688 establishing a process by which electric utilities can apply for an exemption from the obligation to purchase power from qualifying cogeneration facilities and small power production facilities. Order 688 found that the California Independent System Operator met some but not all of the statutory criteria that would allow a finding that utilities were not required to execute new contracts for purchasing power from QFs. FERC Order 688 is available at http://www.ferc.gov/whats-new/comm-meet/101906/E-2.pdf

[7] Comments of EPUC and CAC on Final Workshop Report, p. 7,

bottoming-cycle cogeneration appear to be outside the scope of Senate Bill 1368's definition of "powerplant" as a facility for the generation of electricity.[8] DRA agrees with EPUC/CAC that emissions associated with **"**bottoming cycle" cogeneration would be more appropriately regulated by Assembly Bill 32, and should therefore be exempt from the EPS for powerplants, since the exhaust heat from the industrial process would have released into the environment and "wasted" if not for the use of a bottom cycle to create usable electrical energy.

D. DRA agrees with EPUC/CAC's proposed definition of "annualized" capacity factor.

DRA agrees with EPUC/CAC's proposed definition of "annualized" capacity factor as meaning "average annual" capacity, which would be derived by summing the total annual energy deliveries of a resource, averaging them over a year, and then dividing that average by the plant's permitted capacity to determine a capacity factor. This proposed definition is commonly used when evaluating the performance of a utility's operation and maintenance practices as part of a utility's ERRA[9] review.

E. DRA agrees with the ALJ's proposed definition of "repowering and major renovations."

In a set of directions for reply comments in R.06-04-009 emailed to the service list on October 23, 2006, ALJ Gottstein proposed the following definition of "repowering and major renovations" for purposes of considering whether an existing facility should undergo EPS review:

> "Any investment that is intended to extend the life … of an existing baseload powerplant for five years or more, or results in a net increase in rated capacity for that powerplant."

DRA agrees with the Commission should adopt the above definition for "repowering and major renovations."

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[8] New Public Utilities Code Section 8341(m).

[9] ERRA is the Energy Resources Recovery Account.

F. DRA recommends that the Commission exempt CEC renewable resources from compliance with the EPS.

DRA agrees with the Green Power Institute (GPI) that renewable resources should not be required to document their projected emissions, even if the resource would otherwise be covered because of its size or the length of the contract. As GPI explained, many renewable resources emit no greenhouse gases in the generation of electricity, while those that do, such as biomass and biogas, nevertheless result in lower greenhouse gas emissions overall, because if the biomass and biogas were not used to produce power, they would produce even more emissions in the natural process of decay.[10] DRA would modify GPI's recommendation slightly by deeming renewable resources in compliance with the EPS only if it is a CEC qualified eligible renewable resource.

G. The Commission should not allow R&D Exemptions for resources that do not otherwise meet the EPS limit.

DRA agrees with Calpine, GPI, NRDC, TURN, UCS and WRA that the Commission should not offer case-by-case exemptions to the EPS standard on the basis of "R&D," or any other basis. New Public Utilities Code Section 8341(d)(5) defines how greenhouse gas (GHG) sequestration can be considered in the calculation of a R&D project (or any other) facility's emissions profile. The fact that the state's highest profile carbon sequestration project has not mentioned a need for a R&D exemption in their October 18, 2006 "Comments of the Carson Hydrogen Power Project on the Final Workshop Report" may indicate that such an exemption is superfluous. DRA believes that facilities that do not have the ability and long-term commitment to sequester GHG emissions starting on the first day that facility supplies energy to California residents should not be allowed credit for GHG under, nor exemption from, the EPS.

In addition, DRA recommends that the Commission accept the position of the Attorney General in his opening comments regarding the treatment of projects that involve carbon sequestration. More specifically, DRA endorses and supports the AG's

[10] GPI Opening Comments, p.4-5.

position that the Commission in its standard provide that it retains authority, in conjunction with appropriate regulatory agencies, to determine whether a geological formation injection project will result in the permanent sequestration of carbon dioxide, in order to ensure that the purposes of SB 1368 are served.[11]

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[11] New Public Utilities Code Section 8341(d)(5) states that "Carbon dioxide that injected in geological formations, so as to prevent releases into the atmosphere, in compliance with applicable laws and regulations shall not be counted as emissions of the power plant in determining compliance with applicable laws and regulations shall not be counted as emissions of the powerplant in determining compliance with the greenhouse gases emissions standard."

III. CONCLUSION

For the reasons stated above, DRA recommends that the Commission adopt the recommendations in these reply comments, as well as those set forth in its opening comments.

Respectfully submitted,

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October 27, 2006

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I hereby certify that I have this day served a copy of **"REPLY COMMENTS AND LEGAL ARGUMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE FINAL WORKSHOP REPORT ON PHASE 1 ISSUES"** in **R.06-04-009** by using the following service:

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Executed on October 27, 2006 at San Francisco, California.

/s/ Martha Perez
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